

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10128 of 2006
Date of decision: 7.9.2006

M/s Devans Modern Breweries Limited

...Petitioner

v.

Chandigarh Administration and another

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr Mohan Jain, Advocate, for the petitioner.
Mr. Anupam Gupta, Standing Counsel for UT Chandigarh.

JUDGMENT:

This writ petition has been filed for quashing letters Annexures P.3, P.5 and P.7 not allowing any deviation in the whole-sale rates of IMFL/Bear charged by the petitioner.

Case of the petitioner is that it was granted whole-sale L-1C licence for the sale of bear for the year 2006-07. Under the policy, Annexure P.1, minimum retail sale price of IMFL bear was fixed but there was no provision for fixing any maximum price. Under Clause 67, the licensee was entitled to initially fix selling price itself and approval of the Excise and Taxation Commissioner was required only for increase in such price during the year. The said clause is as under:-

“.....The wholesale licensee to submit their rates at which brand is to be sold and shall not increase the rate without the prior approval of Excise and Taxation Commissioner, U.T., Chandigarh during the currency of the year.....”

Stand taken by the Collector-cum-Deputy Excise and Taxation Commissioner, UT, is that the licensee could not fix the price itself but could only give proposal for consideration. The proposal of the petitioner

was not accepted having regard to the price in the neighbouring States. A chart showing comparative prices has been relied upon, which is as under:-

“COMPARATIVE RATES OF BEAR (PER CASE) IN
U.T. CHANDGIARH, RAJASTHAN AND DELHI

S.No.	Brand Name	Chandigarh	Rajasthan	Delhi
1.	Hayward 5000	183.50	196.88	191.15
2.	Royal Challenge	182.11	166.71	161.85
3.	Castle Lager	289.98	231.75	228.00
4.	Stroh (Light)	213.59	180.00	--
5.	Thunderbolt	200.36	192.61	187.00
6.	Stroh (Strong)	233.36	198.00	--
7.	Kingfisher (Light)	212.79	168.66	163.76
8.	Kingfisher(Strong)	202.55	198.57	192.79
9.	Zingaro	176.36	186.43	181.00
10.	Sandpiper	175.59	--	182.80
11.	Godfather10,000+	180.00	--	--

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It has also been stated that letter dated 1.4.2006, Anenxure P.2 was never received by the respondents.

We have considered the rival submissions.

We are unable to hold that under the policy, licensee was entitled to fix unilateral rate for selling Beer/IMFL. The language of Clause 67 does not grant any such right to a licensee as has been contended on behalf of the petitioner.

Learned counsel for the petitioner also submitted that under Section 59 of the Punjab Excise Act,1914, only power available was to fix minimum price which has been duly fixed under Clause 51 of the policy. The said provision is as under:-

“59. Powers of Financial Commissioner to make rules.
- The Financial Commissioner may, by notification, make rules.

(a) regulating the manufacture, supply, storage or sale of any intoxicant,.....

.....

.....(f) prescribing the authority by, the restrictions under, and the conditions on, which any license, permit or pass may be granted including provision for the following matters:-

(i) the prohibition

.....

(iii) the fixing of strength or price below which any intoxicant shall not be sold, supplied or possessed”

Learned counsel for the petitioner submitted that the Commissioner of Excise could not go beyond authority conferred, as held by the Hon'ble Supreme Court in **Ashok Lanka and another v. Rishi Dixit and others**, (2005) 5 SCC 598.

Learned counsel for the respondents submitted that having regard to the nature of right to do business or trade in intoxicants, no unilateral right for fixation of price can be conceded to a licensee. Though Article 14 may be applicable and judicial review may be permissible in certain situations, no case was made out for a direction declaring that the petitioner had unilateral right to fix price for sale of Beer/IMFL.

Reference may be made to certain decisions of the Hon'ble Supreme Court on the point:-

In **Har Shankar and others etc. v. The Deputy Excise and Taxation Commissioner and others etc**, AIR 1975 SC 1121, it was observed:-

“53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution bench decisions of this Court in Balsara's case 1951 SCR 682 = (AIR 1951 SC 318); Cooverjee's case 1954 SCR 873 = (AIR 1954 SC 220); Kidwai's case 1957 SCR 295 = (AIR 1957 SC 414); Nagendra Nath's case 1958 SCR 1240 = (AIR 1958 SC 398); Amar Chakraborty's case (1973) 1 SCR 533 = (AIR 1972 SC 1863) and the RM

DC case 1957 SCR 874 = (AIR 1957 SC 699) as interpreted in Harinarayan Jaiswal's case (1972) 3 SCR 784 = (AIR 1972 SC 1816) and Nashirwar's case (AIR 1975 SC 360). There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants – its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the state and indeed without such vesting these can be no effective regulation of various forms of activities in relation to intoxicants....”

In **Khoday Distilleries Ltd. And others v. State of Karnataka and others**, (1995) 1 SCC 574, para 62, it was observed:-

“62. We, therefore, hold that a citizen has no fundamental right to trade or business in liquor as beverage. The State can prohibit completely the trade or business in potable liquor since liquor as beverage is res extra commercium. The State may also create a monopoly in itself for trade or business in such liquor. The State can further place restrictions and limitations on such trade or business which may be in nature different from those on trade or business in articles res commercium. The view taken by this court in K.K.Narula case as well as in the second Synthetics and Chemicals Ltd. Case is not contrary to the aforesaid view which has been consistently taken by this court so far.”

In **Common Cause, a Registered Society v. Union of India and others**, AIR 1999 SC 2979, it was observed:-

43. Government decisions regarding award of contracts are also open to judicial review and if the decision-making process is shown to be vitiated by arbitrariness, unfairness, illegality and

irrationality, then the Court can strike down the decision-making process as also the award of contract based on such decision. This was so laid down by this Court in *Tata Cellular v. Union of India*, (1994) 6 SCC 651 : AIR 1996 SC 11 : (1994 AIR SCW 3344). Initially the Supreme Court was of the opinion that while the decision-making process for award of a contract would be amenable to judicial review under Articles 226 or 32 of the Constitution, a breach of a contractual obligation arising out of a contract already executed would not be so enforceable under such jurisdiction and the remedy in such cases would lie by way of a civil suit for damages. (See: *Radhakrishna Agarwal v. State of Bihar*, (1977) 3 SC 457: (1977) 3 SCR 249: AIR 1977 SC 1496). But the Court changed its opinion in subsequent decisions and held that even arbitrary and unreasonable decisions of the government authorities while acting in pursuance of a contract would also be amenable to writ jurisdiction. This principle was laid down in *Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd*, (1983) 3 SCC 379 : AIR 1983 SC 848. This Court even went to the extent of saying that the terms of contract cannot be altered in the garb of the duty to act fairly. (See: *Asstt. Excise Commr. v. Issac Peter*, (1994) 4 SCC 104 : (1994) 2 SCR 67 : (1994 AIR SCW 2616). Duty to act fairly in respect of contracts was also the core question in *Mahabir Auto Stores v. Indian Oil Corpn.* (1990) 1 SCR 818 : (1990) 3 SCC 752 : AIR 1990 SC 1031 in which this Court relied upon its earlier decisions in *E.P. Royappa v. State of T.N.*, (1974) 2 SCR 348 : (1974) 4 SCC 3 : AIR 1974 SC 555; *Maneka Gandhi v. Union of India*; (1978) 1 SCC 248: (1978) 2 SCR 621: AIR 1978 SC 597; *Ajay Hasia v. Khalid Mujib Sehravardi*; (1981) 1 SCC 722: (1981) 2 SCR 79: AIR 1981 SC 487, *Ramana Dayaram Shetty v. International Airport Authority of India* AIR 1979 SC 1628 as also *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay* (1989) 3 SCC 293 : (1989) 2 SCR 751 : AIR 1989 SC 1642.”

We also find that under the statutory scheme, the State Government and subject to the control of the State Government, the Financial Commissioner/Commissioner of Excise was entitled to exercise full control to regulate sale of intoxicants. Reference may be made to the provisions of Section 8 of the Act, which reads as under:-

8. Superintendence and control of excise administration and excise officers. - (a) Subject to the control of the State Government and unless the State Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner.

(b) Subject to the general superintendence and control of the Financial Commissioner and unless the State Government shall by notification otherwise direct, the Commissioner shall control all other excise officers in his division.

(c) Subject as aforesaid and to the control of the Commissioner and unless the State Government shall by notification otherwise direct the Collector shall control all other excise officers in his district.”

Section 59 of the Act relied upon by the learned counsel for the petitioner does not, in any manner, dilute the jurisdiction to control price for sale. Moreover, the State Government has power to frame rules.

Learned counsel for the State in fact explained that there is an express power under Rule 125 of the Punjab Distillery Rules, 1932, which are also applicable to the breweries. The said rule is as under:-

“125. No holder of a distillery license shall sell country spirit at prices higher than those fixed by the Excise Commissioner from time to time.”

The Punjab distillery Rules, 1932 are applicable in matters not specified in the Punjab Brewery Rules, 1956. Rule 41 of 1956 Rules is as under:-

“[41. In all matters not specified in these rules, the Punjab Distillery Rules shall apply mutatis mutandis]”

Learned counsel for the State submitted, in the alternative, that power to control price was inherent with the Commissioner of Excise and no express provision has been shown conferring such right on the licensee. We uphold this contention. As already observed, the licensee is not entitled to fix unilateral rate for selling Beer/IMFL. Such a right cannot be inferred from Clause 67 of the policy. On the other hand, the authorities are entitled to fix price. Reasons given by the statutory authorities in fixing the rates of sale are not shown, in any manner, to be arbitrary so as to call for interference of this court.

Accordingly, the writ petition is dismissed.

(Adarsh Kumar Goel)
Judge

September 07, 2006
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(Rajesh Bindal)
Judge